If the message had been duly relayed and transmitted from Washington city to Fredericksburg, and the only default had occurred there in failing to deliver the message to the sendee, it is clear that an action would lie to recover the penalty under the decision in the James Case."

To uphold the recovery in this case would give to the Virginia statute an extraterritorial effect, to which it is not entitled. Western Union Telegraph Co. *v.* Pendleton, 122 U. S. 347, 7 Sup. Ct. 1126, 30 L. Ed. 1187; Western Union Tel. Co. *v.* Chiles, 214 U. S. 274, 29 Sup. Ct. 613, 53 L. Ed. 994.

For these reasons, the judgment must be reversed, and the case dismissed.

Reversed.

DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

PASCHALL & GRESHAM *v.* GILLISS.

June 13, 1912.

[75 S. E. 220.]

1. Brokers (§ 88*)—Commissions—Termination of Authority—Bad Faith—Question for Jury.—Where plaintiff was employed to sell certain timber land for $200,000 on a commission of 5 per cent., and the land was subsequently sold to a purchaser whom plaintiff had procured for $180,000, because the purchaser claimed plaintiff had misrepresented the amount of the timber on the land, plaintiff's bad faith, if any, was a question for the jury.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. §§ 121, 123-130; Dec. Dig. § 88.* 2 Va.-W. Va. Enc. Dig. 642.]

2. Work and Labor (§ 29*)—Express Contract—Quantum Meruit.—Where plaintiff was employed to sell certain timber land for $200,000 on a 5 per cent. commission, and the owners thereafter sold the land to a purchaser procured by plaintiff for $180,000, the plaintiff's right of action to recover commissions was not limited to an action on the express contract; but he was entitled to sue on a quantum meruit

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

and prove the express contract as evidence of the value of his services.

[Ed. Note.—For other cases, see Work and Labor, Cent. Dig. §§ 56-58; Dec. Dig. § 29.* 2 Va.-W. Va. Enc. Dig. 22.]

3. Brokers (§ 69*)—Commissions—Interest.—Where, after a broker had been employed to sell timber land, the owners sold the land for a less price than the broker was authorized to accept to a purchaser procured by the broker, and then wrote the broker that the land had been sold and that he was not entitled to commissions, his right of action for commissions then accrued, and he was entitled to interest on the amount found to represent the reasonable value of his services from that date.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. § 55; Dec. Dig. § 69.* 2 Va.-W. Va. Enc. Dig. 643; 7 Va.-W. Va. Enc. Dig. 827.]

4. Brokers (§ 69*)—Right to Commissions—Sale at Different Price.—Where a broker contracts to furnish a purchaser for timber lands at a stipulated price, and furnishes a purchaser to whom the owner sells at a less price, the broker is entitled to recover such compensation for his services as would be reasonable under all the facts and circumstances of the case.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. § 55; Dec. Dig. § 69.* 2 Va.-W. Va. Enc. Dig. 638; 14 Va.-W. Va. Enc. Dig. 177.]

Error to Law and Equity Court of City of Richmond.

Action by J. I. Gilliss against J. R. Paschall and Thomas Gresham, partners as Paschall & Gresham. From a judgment for plaintiff, defendants bring error. Affirmed.

The following are the instructions given for plaintiff:

1. "If the jury believe from the evidence (1) that the defendants employed the plaintiff, Gilliss, to sell the timber on the Lofton tract; (2) that the plaintiff, Gilliss, brought the said property to the attention of Mr. and Mrs. Johnson; (3) that the defendants, in the absence of the plaintiff (Gilliss), attempted to sell said property to the said Johnsons; (4) that the said Johnsons told the defendants that the plaintiff, Gilliss, had informed them (the said Johnsons) that he (Gilliss) thought the aforesaid tract of land contained not more than 90,000,000 feet of timber; (5) that the said Johnsons also told the defendants that they, the said Johnsons, were unwilling to pay more than $2 a thousand feet, based on the aforesaid estimate of the plaintiff, Gilliss, or a total sum of $180,000; (6) that the said Johnsons offered the defendants the sum of $180,000 for the aforesaid timber, and informed the defendants that the amount of said offer was cal-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

culated by allowing $2 a thousand feet for the quantity of timber stated in the aforesaid estimate of the plaintiff, Gilliss; (7) that, after receiving the aforesaid information, the defendants accepted the aforesaid offer of the said Johnsons, and sold and conveyed said property to said Johnsons; (8) that the plaintiff, Gilliss, although absent at the time such sale was actually made, had originally brought said property to the attention of said Johnsons, and was the procuring cause of said sale—then the court instructs the jury that, even though they may believe from the evidence that the plaintiff, Gilliss, had not been authorized to sell said property for any sum less than $200,000, nevertheless the plaintiff Gilliss is entitled to recover from the defendants, unless the jury believe it is shown, by a preponderance of the evidence to the satisfaction of the jury, that prior to the aforesaid sale the plaintiff, Gilliss, informed the defendant Paschall, expressly or in substance, that he (Gilliss) abandoned the aforesaid employment by the defendants to sell said timber for them, or unless the jury believe from the evidence that Gilliss, although claiming to act for Paschall & Gresham, was the actual representative of Mr. and Mrs. Johnson."

2. "That the plaintiff was the procuring cause of said sale, if said sale was brought about by the plaintiff's exertions in presenting the property to the attention of the purchasers, or by his introducing the purchasers to the defendants, or by his giving to the defendants as possible purchasers the names of the said Mrs. Jessie C. Johnson and Ira Johnson."

3. "That if the jury believe from the evidence that the plaintiff was authorized or requested by the defendants to sell the Lofton tract for them, and that pursuant thereto the plaintiff brought the property to the attention of the purchasers, Mr. and Mrs. Johnson, and was the means of putting the defendants into communication with them, then the jury are instructed that it was not necessary that the plaintiff should have personally participated in the actual negotiations which ended in the sale, and his right to recover commissions cannot be defeated because of his failure to personally participate in said negotiation."

4. "If the jury find for the plaintiff, Gilliss, they should award him the principal sum of $9 000, and should state, in their verdict, that the said sum is to bear interest from September 10, 1909."

5. "The court instructs the jury that, even though they believe from the evidence that at one time J. I. Gilliss, the plaintiff in this case, had a contract with the defendants for the sale of their property, known as the 'Lofton tract,' nevertheless, if they believe from the evidence that the plaintiff abandoned the said contract and ceased in his efforts to sell the same, and informed Mr. Paschall expressly or in substance that he (Gilliss)

abandoned the employment by the defendants to sell the Lofton timber for them to Mr. and Mrs. Johnson, they must find for the defendants."

6. "The court instructs the jury that if they believe from the evidence that said J. I. Gilliss, while claiming to represent the said Paschall & Gresham, the defendants in this case, was actually representing Mr. and Mrs. Johnson, the purchasers of said timber, they must find for the defendants. But the fact that Gilliss was the estimator and agent of the Greenleaf Johnson Company, a corporation in which Mrs. Johnson and her son were stockholders, would not constitute Gilliss as personally representing Mr. and Mrs. Johnson as the purchasers of said timber in the meaning of these instructions; for, to defeat the claim of Gilliss to his commissions on this ground, the jury must be satisfied from the preponderance of the evidence, either direct or circumstantial, that Gilliss was actually the personal representative of Mr. and Mrs. Johnson in the transaction of the negotiations for the sale of the timber, although claiming to represent Paschall & Gresham."

The following are those refused to defendant:

1. "The court instructs the jury that the contract entered into between the parties in this suit was a contract for the payment of a commission in the event of a sale at the fixed price of $200,000; and if they believe from the evidence that said timber was sold for less than $200,000, then they must find for the defendants."

2. "The court instructs the jury that for the plaintiff, J. I. Gilliss, to recover in this case, he must show by a preponderance of evidence that he found a purchaser ready and willing to purchase the timber of the defendants upon the terms and price at which the defendants authorized him to sell; and if they believe from the evidence that J. I. Gilliss failed to produce such a purchaser, they must find for the defendants."

3. "The court instructs the jury that, even though they believe from the evidence that at one time J. I. Gilliss, the plaintiff in this case, had a contract with the defendants for the sale of their property, known as the 'Lofton tract,' nevertheless, if they believe from the evidence that the plaintiff abandoned the said contract and ceased in his efforts to sell the same, they must find for the defendants."

4. "The court instructs the jury that if they believe from the evidence that said J. I. Gilliss, while claiming to represent the said Paschall & Gresham, the defendants in this case, was actually representing Mrs. Johnson, the purchaser of said timber, then they must find for the defendants."

5. "The court instructs the jury that if they believe from the evidence that the said J. I. Gilliss had estimated said Lofton tract

of timber, and had made a written estimate thereof showing 112,000,000 feet of timber thereon, and that, while claiming to act as the agent of said Paschall & Gresham, he represented to a proposed purchaser that there was only 90,000,000 feet of timber on said tract, then the said Gilliss acted contrary to his duty to the said Paschall & Gresham, and they must find for the defendants."

6. "The court instructs the jury that the utmost good faith is required of an agent or broker, and if they believe from the evidence that the said J. I. Gilliss, plaintiff herein, at the time it is alleged he was acting as the agent of Paschall & Gresham, the defendants herein, was likewise acting for the vendees, the Johnsons, or that he gave the said Johnsons private information without the knowledge of Paschall & Gresham, or that Paschall & Gresham were prevented from receiving their price through the misrepresentation of the said Gilliss, they must find for the defendants."

7. "The court instructs the jury that the relation of principal and agent is a confidential one, and requires the utmost good faith from the agent to his principal, and that it is the duty of an agent to disclose to his principal promptly, frankly, and fully his (the agent's) relations to the subject of his agency, and all information coming to his knowledge affecting the subject of his agency, and that if they believe from the evidence that the said J. I. Gilliss, while claiming to act as agent for the said Paschall & Gresham, did not exercise towards them the utmost good faith, or did not disclose promptly, fully, and frankly to said Paschall & Gresham his relations to, or information in his possession materially affecting, the sale of said Lofton property to Mrs. Johnson, or the information or reports given or made by him to the said Mrs. Johnson in regard to said property, then the said Gilliss forfeited any right he may have had to commissions, and they must find for the defendants."

8. "The court instructs the jury that it was the duty of the said Gilliss, if they believe he was acting as an agent of the defendants, to make a full, frank, and prompt disclosure of his relations to the transaction, and of any information furnished by him to the Johnsons, and the said Gilliss had no right to leave these matters to conjecture and inference, and that unless he made such full, frank, and prompt disclosure to Paschall & Gresham, the defendants in this case, then he forfeited any right to commissions that he might have had, and they should find for the defendants. And the court further instructs the jury that the law does not inquire whether or not a principal was injured by reason of such failure on the part of the agent to disclose his relations to the subject of his agency, but that it is only suffi-

cient to show such failure to deprive the agent of any right to commissions."

9. "If the jury believe from the evidence that the plaintiff is entitled to recovery, not under the contract, but on account of services, then such amount must be based upon the value of the plaintiff's services, less any loss that may have been caused by the failure of the plaintiff to carry out the special contract proved in this case."

Williams & Mullen, for plaintiffs in error.

Braxton & Eggleston and *R. W. Tomlin,* for defendant in error.

JACKSON COAL & COKE CO. et al. *v.* PHILLIPS LINE et al. SEWARD & ROPER *v.* SAME.

June 13, 1912.

[75 S. E. 681.]

1. **Receivers** (§ 196*)—**Compensation—Charges.**—Receivers, operating under the orders of the court the business of the insolvent company, though unsuccessfully, not being charged with bad faith, are entitled to allowance of reasonable compensation for their services, and a fortiori cannot be chargeable with the expenses of operation.

[Ed. Note.—For other cases, see Receivers, Cent. Dig. §§ 659-661; Dec. Dig. § 196.*]

2. **Receivers** (§ 153*)—**Liens—Priorities—Receivership.**—The state and city having no lien on the personal property of an insolvent, which went into the hands of receivers, for the taxes previously assessed thereon, they never having exercised their right of levy or distress; priority of payment should not be given therefor, but only for the taxes thereafter assessed against and due from the receivers.

[Ed. Note.—For other cases, see Receivers, Cent. Dig. §§ 467-471; Dec. Dig. § 153.*]

3. **Receivers** (§ 202*)—**Accounting—Motion to Surcharge.**—The motion to surcharge the accounts of the receivers being accompanied by no data on which the court could ascertain with any degree of certainty what items or matters were complained of, it was too vague and indefinite to warrant entertaining it, especially when it was accompanied with a disclaimer of any intention to impute bad faith to the receivers.

[Ed. Note.—For other cases, see Receivers, Cent. Dig. §§ 669, 670; Dec. Dig. § 202.*]

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am Dig. Key No. Series & Rep'r Indexes.